## APPELLATE CIVIL.

*Before Rankin C. J. and C. C. Ghose J.*

JOGENDRANATH SHAHA

*v.*

RAIKISHORI DASEE.*

1932

*Mar.* 1.

*Insolvency—Adjudication upon debtor's petition, if* prima facie *case made out—Provincial Insolvency Act (V of 1920), ss. 10, 22, 24.*

Section 10 of the Provincial Insolvency Act lays down, amongst others, that, unless a debtor is unable to pay his debts (not being less than Rs. 500), or unless an order for attachment in execution of a decree has been made and is subsisting against his properties, he shall not be entitled to present an insolvency petition.

Section 24 of the Act provides, amongst others, that, on the day of hearing, or, on the adjourned day of hearing, the court shall require proof, *inter alia*, that the debtor is entitled under section 10 to present his petition in insolvency. Section 24 further says, "that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the court that there are *prima facie* grounds for believing the same and the court, if and when so satisfied, shall not be bound to hear any further evidence thereon." The provision quoted above indicates that the insolvency proceedings should not be commenced by a complete investigation as to the debts and assets of the applicant-debtor in order to ascertain whether he should be declared an insolvent or not.

APPEALS FROM ORIGINAL ORDERS.

The material facts will appear from the judgment.

*Nirodbandhu Ray* for the appellant. The court can dismiss the debtor's petition when it is not satisfied of his right to present the petition. Section 25 (*2*) of the Provincial Insolvency Act. The right to present the petition is defined in section 10.

*Radhabinode Pal* (with him *Premranjan Ray Chaudhuri*) for the respondent. The learned District Judge was entitled to enquire whether the debtor was unable to pay his debts. The debtor must establish his inability to pay his debts. The debtor having withheld his account books the learned District Judge

*Appeals from Original Orders, Nos. 240 and 258 of 1930, against the order of P. C. De, District Judge of Jessore, dated May 17, 1930.

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was competent to infer that, had the account books been produced, they would have proved that the debtor was not unable to pay his debts. Section 24.

RANKIN C. J. In these cases, each of two brothers appeals from an order of the learned District Judge of Jessore, refusing to adjudicate him insolvent on his own petition. There has been, in my judgment, a distinct amount of misconception in the way the matter was treated in the lower court. The position is that, by section 10 of the Provincial Insolvency Act, a debtor is not entitled to present his petition, unless he is unable to pay his debts and his debts amount to five hundred rupees, and so forth. Now, under the previous Act, there were many scandalous contentions on the part of creditors, who wanted to make the proceedings begin by a complete examination—finding out the man's debts and his assets in order to find out whether he should be insolvent or not; and that purely nonsensical course had to be dealt with by the legislature and it was carefully provided by section 24 that the court, on the day fixed for the hearing of the petition, was to require proof, amongst other things, that the debtor was entitled to present his petition; that is to say, that the conditions outlined by section 10 existed. It went on to say:

> Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the court that there are *prima facie* grounds for believing the same and the court, if and when so satisfied, shall not be bound to hear any further evidence thereon.

In the present case, the principle of that proviso appears to me to be thoroughly unnoticed. The creditors alleged that the insolvents had landed properties; they alleged that the insolvents were carrying on business; and, having failed in these two contentions, they next contended that, whereas under section 22 the debtors ought to have produced their books of account on the making of the order admitting the petition, the debtors had not satisfactorily explained how they came to be, as they said, unable to produce the books for three certain years. I cannot

find, from beginning to end, that the District Judge had any *prima facie* difficulty in inferring that these people were unable to pay their debts, but he thought that the books would show how they became unable to pay their debts and that they would show when they first became unable to pay their debts. It appears that the insolvents suffered an attachment in 1334 B.S., and that they have been trying to wind up their business ever since and it is said that they are only now carrying on a very small trade just enough to keep themselves and their family in existence; it is perfectly obvious that this is a case where an adjudication order should be made. In these appeals, we will make the adjudication order here and now and remand the matter to the District Court. There will be no order as to costs.

The debtor is to apply for discharge within one year from to-day.

C. C. GHOSE J. I agree.

*Appeal allowed.*

A. K. D.